No. 932084 JUN 27 1994

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In The

Supreme Court of the United States

October Term, 1993

DAVID BENJAMIN,

Petitioner,

v.

THOMAS ADAM, THOMAS BAILEY, ANDREW BAKAYSA, CHARLES BAKAYSA, JOHN BAKAYSA, EDWARD BARRETT, CARL BAUM, CLAIR BAUM, JACK BAUM, JACK BAUMGARTNER, JAMES BEATTY, CARL BECK, EVERTT BELL, GREGG BELL, THOMAS BELL, ALBERT BELL,
(continued on Inside Cover)

Respondents.

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,

Additional Respondents.

Petition For Writ Of Certiorari To The Superior Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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THOMAS WILLIAMS, ROBERT WITHERITE, ROBERT WOODS, MICHAEL WRIGHT, ROBERT WRIGHT, DALE YARGER, GARY YARGER, KENNETH YARGER, DENNIS YOUNG, JOHN YOUNG, AND LARRY YOUNG,

QUESTIONS PRESENTED

1) Whether this Court should resolve the conflict that exists between state and federal courts by holding that § 301 of the Labor Management Relations Act ("LMRA") preempts a state-law Wage Payment and Collection Law ("WPCL") claim for the breach of a collective bargaining contract covered by the LMRA.

2) Whether this Court should resolve the conflict that exists between State and Federal courts by holding that a corporate official is not personally liable for the breach of a collective bargaining agreement covered by the LMRA absent a showing sufficient to pierce the corporate veil under Federal common law.

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PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

The Petitioner, David Benjamin respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Superior Court of Pennsylvania, entered in the above-entitled proceeding on June 30, 1993.

OPINIONS BELOW

The order of the Pennsylvania Supreme Court denying Petitioner's allowance of appeal (A1) is reported at ___ A.2d ___ (Pa. Mar. 28, 1994). The Pennsylvania Superior Court's opinion (C1) is reported at 426 Pa. Super. 543, 627 A.2d 1186 (1993). The opinions of the Court of Common Pleas of Blair County, Pennsylvania (D1, E1, F1) are not officially reported.

JURISDICTION

The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal in this case on March 28, 1994 (A1). The jurisdiction of this Court to review the decision of the Pennsylvania Supreme Court is invoked under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The provisions of the Labor Management Relations Act ("LMRA") involved are 29 U.S.C. §§ 142 and 185. The

provision of the National Labor Relations Act ("NLRA") involved is 29 U.S.C. § 152. The provisions of the Pennsylvania Wage Payment and Collection Law ("WPCL") involved are Pa. Stat. Ann. tit. §§ 260.2a, 260.8, 260.9a and 260.10. All of these provisions are set forth in the Appendix (G1).

STATEMENT OF THE CASE

On October 1, 1984, Benjamin Coal Company ("BCC") filed for Chapter 11 bankruptcy. The Bankruptcy Court for the Western District of Pennsylvania approved a plan of reorganization on October 4, 1985. In recognition of BCC's continuing financial difficulties, the employees' union, the United Mine Workers of America ("UMW"), agreed to a "no-strike" provision in their February 5, 1989 collective bargaining agreement.[1]

On June 21, 1989, the UMW directed pickets to BCC job sites in a sympathy strike in support of Pittston miners in West Virginia and Virginia. In support of this sympathy strike, the employees of BCC left work before completing their shift. Petitioner David J. Benjamin, the president and principal stockholder of BCC, warned the

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[1] The no-strike provision in the February 5, 1989, collective bargaining agreement reads as follows:

> Failure to reach an agreement on pensions during reopener negotiations shall entitle the parties to settle such dispute by free collective bargaining as heretofore practiced in the industry which includes, but is not limited to, the right to strike. Both parties recognize the Union's right to strike only over this issue during the term of the Agreement.

employees that continued work stoppage would lead BCC's banks to freeze the company's accounts. Despite this warning, the walkout continued. On June 23, 1989, BCC's banks froze the Company's funds, thus preventing the employees from being paid. On June 30, 1989, BCC was forced to convert its Chapter 11 bankruptcy action to a Chapter 7 action.[2]

The UMW failed to file a timely claim for the employees' wages and benefits in the bankruptcy action. Even after the bar date, the trustee twice offered to file wage claims on behalf of the employees. Both of these offers were rejected. The former employees of BCC have filed a legal malpractice action against the union's attorneys, alleging that the attorneys were negligent in filing untimely claims. *See* Complaint, *Eger v. Hillman*, C.A. No. 91-2565 (W.D. Pa.).

On November 6, 1989, Respondents, two hundred and twenty-nine former employees of BCC, instituted an action against Petitioner for wages (for the period from May 28 to June 21, 1989) and benefits (vacation time, sick days, and monies withheld for the purchase of U.S. Savings Bonds). Respondents averred that Petitioner had breached the collective bargaining agreement and violated the Pennsylvania Wage Payment and Collection

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[2] Contrary to the summary contained in the opinion of the Pennsylvania Superior Court, 426 Pa. Super. at 548, 627 A.2d at 1189, the employees were not informed that there was no more work until June 26, 1989, *i.e.*, after the banks had already frozen BBC's bank accounts.

Law, Pa. Stat. Ann. tit. 43, § 260.1 *et seq.* (1992 & Supp. 1994) ("WPCL").[3]

In the pleadings that followed, Petitioner averred that federal labor laws preempted Respondents' claims against Petitioner, both because the claims were based on the breach of a collective bargaining agreement governed by the LMRA and because the claims were filed against Petitioner in his personal capacity, rather than against an "employer" as defined under the LMRA and the NLRA. Petitioner also asserted defenses based on Respondents' failure to file a timely bankruptcy claim, Respondents' breach of the no-strike clause and Respondents' unauthorized walkout which rendered BCC unable to pay their wages. Respondents in turn averred that §§ 301 and 303 of the LMRA, 29 U.S.C. 185 and 187, preempted these latter two defenses because they were based on the breach of a collective bargaining agreement.

On July 17, 1992, the trial court entered summary judgment for Respondents, holding that their work stoppage was irrelevant to the determination of their wages and benefits since the wages and benefits had already been earned at the time of the walkout. The trial court then rejected Petitioner's preemption arguments by relying on a footnote in an opinion of the Court of Appeals for the Third Circuit, which had summarily stated that the contention that the LMRA preempted the WPCL was "without merit." See *Carpenters Health & Welfare Fund v.*

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[3] Plaintiffs' Complaint attached the collective bargaining agreement as an appendix, specifically referenced the agreement in five different paragraphs and used the wage schedule of the agreement to calculate the back wages and benefits.

Kenneth R. Ambrose, Inc., 727 F.2d 279, 282 n. 5 (3d Cir. 1983). Lastly, the trial court held that the WPCL did not require that Respondents exhaust their claims for relief against the bankrupt BCC before pursuing WPCL claims against Petitioner. The trial court subsequently entered judgment for the employees in the amount of $477,434.26 wages and benefits and $36,309.29 in attorneys fees and costs. The Court also held that because, in its opinion, Benjamin had failed to raise a good faith defense, Respondents were entitled to liquidated damages, in the amount of $133,082.59, for a total judgment of $646,826.14.

Petitioner appealed, again arguing that federal labor law preempted Respondents' WPCL claims against him. In brief, Petitioner argued that the LMRA and the NLRA preempted Respondents' claims for three reasons: 1) because Respondents' WPCL action was based on the breach of a collective bargaining agreement covered by the LMRA; 2) because Petitioner had raised a defense based on the breach of a collective bargaining agreement covered by the LMRA; and 3) because Respondents had not made the requisite factual averments necessary to hold a corporate officer individually liable for the breach of a collective bargaining agreement. Petitioner also challenged the lower court's rejection of his defenses based on Respondents' illegal walkout and their failure to file timely bankruptcy claims.

The Pennsylvania Superior Court affirmed. *See Adam v. Benjamin*, 426 Pa. Super. 543, 627 A.2d 1186 (1993). Relying on this Court's opinion in *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987), the Pennsylvania Superior Court began by stating that a state-law complaint for

breach of individual employment contracts is not "completely preempted" by § 301 of the Labor Management Relations Act. *See Adam*, 426 Pa. Super. at 550 n. 4, 627 A.2d at 1190 n. 4. The Pennsylvania Superior Court then held that Benjamin's defenses based on the no-strike clause in the collective bargaining agreement and Respondents' unauthorized walkout were precluded by this Court's opinion in *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401 (1981), which held that § 301 of the LMRA does not allow an employer to seek damages against individual employees who breached the no-strike provision of a collective bargaining agreement. Having held that *Complete Auto* precluded Benjamin's defenses, the Pennsylvania Superior Court concluded that no interpretation of the collective bargaining agreement was necessary. Absent the need for such interpretation, the Pennsylvania Superior Court held that Respondents' WPCL claims were not preempted. *See Adam*, 426 Pa. Super. at 553, 627 A.2d at 1191-92. The Pennsylvania Superior Court also rejected Petitioner's argument that Respondents' claims were barred by their failure to exhaust their remedies against the bankrupt BCC. *See Id.* at 554-55, 627 A.2d at 1193.

Petitioner filed a petition for allowance of appeal to the Pennsylvania Supreme Court. In addition to the federal labor law preemption precedents previously cited, Petitioner relied on the recently-decided case of *Wheeler v. Graco Trucking Corp.*, 985 F.2d 108 (3d Cir. 1993,) *reh'g denied*, (Feb. 18, 1993). In *Wheeler*, the Court of Appeals for the Third Circuit departed from its previous precedent by holding that federal labor law preempts an employee's WPCL claim for wages allegedly due under a collective bargaining agreement. The Pennsylvania

Supreme Court denied the petition for allowance of appeal without an opinion.

REASONS FOR GRANTING THE WRIT

Because Congress has never exercised authority to occupy the entire field in the area of labor legislation, the question whether a certain state action is preempted by federal law is one of congressional intent. In *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), this Court explained how this analysis applies in determining the preemption scope of § 301 of the LMRA:

> Congress did not state explicitly whether and to what extent it intended § 301 of the LMRA to pre-empt state law. In such instances courts sustain a local regulation "unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States." *Id.* at 208-209 quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504, 98 S.Ct. 1185, 1190 (1978).

Pennsylvania courts have repeatedly ignored this Court's § 301 preemption analysis by holding that state, not federal, law determines when a corporate officer may be held personally liable for the breach of a collective bargaining agreement covered by the LMRA. But regardless of whether this Court agrees that Pennsylvania courts have erred on this question, there is no denying that the decisions of Pennsylvania courts are at the heart of a conflict between state and federal courts on two

important issues of federal labor law. First, state and federal courts are currently divided on the extent to which § 301 of the LMRA preempts WPCL claims for the breach of a collective bargaining agreement covered by the LMRA. This split threatens to grow ever wider because forty-eight states currently have WPCL statutes that appear to allow state-law remedies for the breach of collective bargaining agreements covered by the LMRA. Second, state and federal courts are also currently split on whether state or federal law governs when corporate officers are personally liable for the breach of a collective bargaining agreement. Once again, because twenty-nine states have WPCL statutes that appear to permit the imposition of personal liability on corporate officers, this division should continue to grow.

The Pennsylvania Superior Court's analysis of *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401 (1981), does not undermine the need to resolve these divisions. Because Respondents' *claims* under the WPCL against Petitioner are preempted by § 301 of the LMRA, this Court need not consider the validity under *Complete Auto* of Petitioner's *defenses* based on the no-strike clause and Respondents' refusal to work. If, however, this Court chooses to reach this issue, it should hold that these defenses are not precluded by *Complete Auto*, which held only that *§ 301 damage actions* against individual employees were so prohibited. To hold otherwise would frustrate the federal labor law scheme by affirming a parallel universe where employees are given remedies and employers are stripped of their defenses.

I. State and Federal Courts are Divided on Whether § 301 Preempts an Employee's WPCL Claim for the Breach of a Collective Bargaining Agreement Covered by the LMRA.

Federal and state courts are currently divided as to which of two lines of this Court's precedents govern the preemption of state-law WPCL claims for the breach of a collective bargaining agreement governed by the LMRA. State courts in Pennsylvania and West Virginia have followed one line of precedents in holding that § 301 of the LMRA does not preempt state-law WPCL claims for the breach of a collective bargaining agreement covered by the LMRA unless interpretation of the collective bargaining agreement is required. In direct conflict are the decisions of the federal courts in these States and the Seventh Circuit, which have emphasized another line of the Court's precedents in holding that federal labor laws preempt *all* state-law WPCL claims for the breach of a collective bargaining agreement covered by the LMRA.

The line of this Court's precedents followed by federal Courts begins with this Court's decision in *Textile Workers Union of Am. v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957), which held that, by enacting § 301(a), Congress intended to create a uniform body of federal law to govern the enforcement of collective bargaining agreements. *Id.* at 455. The impact of this decision was subsequently clarified by *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962), and *Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962). *Charles Dowd Box* held that concurrent state and federal court jurisdiction exists over § 301 lawsuits. *Lucas*

Flour held that in either jurisdiction, the courts must apply the federal common law which arises under § 301.

The line of this Court's labor law precedents followed by state courts begins with the expansion of the preemptive effect of § 301 to include state law claims not directly based on a collective bargaining agreement governed by the LMRA. Under these precedents, a state law claim is not preempted unless it is "inextricably intertwined with consideration of the terms of the labor contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985) (state law tort claim). *See also, IBEW v. Hechler*, 481 U.S. 851, 857 (1987); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 396 (1987); *Lingle v. Norge Div. of Magic Chef*, 486 U.S. 399 (1989) (claim under state worker's compensation statute).

It is clear that an action under Pennsylvania's WPCL must be grounded upon the contract between the employer and employee:

> WPCL does not create a right to compensation. Rather, it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. The contract between the parties governs in determining whether specific wages are earned.

Weldon v. Kraft, Inc., 896 F.2d 793, 801 (3d Cir. 1990) (citing *Sendi v. NCR Contem, Inc.*, 619 F. Supp. 1577, 1579 (E.D. Pa. 1985), *aff'd*, 800 F.2d 1138 (3d Cir. 1986), *Laborers Combined Funds v. Mattei*, 359 Pa. Super. 399, 403, 518 A.2d 1296, 1298 (1986)). It is also clear that Respondents based their WPCL claims on their collective bargaining agreement with BCC: Respondents' Complaint attached the

collective bargaining agreement as an appendix, specifically referenced the agreement in five different paragraphs and used the wage schedule of the agreement to calculate the back wages and benefits. Because interpretation of the collective bargaining agreement is thus unavoidable, the *Lincoln Mills/Lucas Flour* preemption analysis applies to preempt Respondents' claims. Accordingly, the Pennsylvania Superior Court erred in holding that Respondents' WPCL claims were not preempted.

The federal courts that have considered the preemption of WPCL claims for the breach of a collective bargaining agreement have followed the *Lincoln Mills/Lucas Flour* analysis. As adopted by the Seventh Circuit in *Evans v. Einhorn*, 855 F.2d 1245 (7th Cir. 1988):

> There is no suggestion in any of these three recent Supreme Court cases [*Lueck*, *Heckler*, or *Caterpillar*] that the *Lincoln Mills/Lucas Flour* preemption analysis for breaches of collective bargaining agreements has been changed. In fact, all three cases clearly differentiate between the standard § 301 preemption analysis, and the newer *Allis-Chalmers* analysis for preemption of state law tort claims. *Id.* at 1251.

The Seventh Circuit also distinguished *Lingle* from the standard § 301 analysis because the discharged employee in *Lingle* had an independent cause of action for retaliatory discharge under a state worker's compensation statute. *Id.* at 1246 n.1.

The Third Circuit also recently adopted the view that this Court's *Lincoln Mills/Lucas Flour* analysis governs the preemption of WPCL claims for the breach of a collective bargaining agreement.

> [A]s the Supreme Court held in *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 102-06, 82 S. Ct. 571, 576-78, 7 L.Ed.2d 593 (1962), federal labor law preempts state-law claims for breach of a collective bargaining agreement covered by the LMRA. . . . Stressing the need for a single, comprehensive, and uniform body of federal law to govern labor-management relations, the Court wrote: "With due regard to the many factors which bear upon competing state and federal interests in this area . . . , we cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Id.* at 104, 82 S. Ct. at 577. Thus, it has been settled since *Lucas Flour* that a state-law claim for breach of a collective bargaining agreement subject to the LMRA is preempted by federal labor law.

Wheeler v. Graco Trucking Corp., 985 F.2d 108, 112-113 (3d Cir. 1993), *reh'g denied*, (Feb. 18, 1993).

Having reviewed these precedents, the Third Circuit correctly held that

> Wheeler's [state-law] claim is based squarely on the terms of the collective bargaining agreement and therefore is governed exclusively by federal law. *Id.* at 113.

The *Wheeler* decision confirmed the prediction of the lower courts in the Third Circuit that this Court's decision in *Lueck* had undermined previous Third Circuit

precedent that cursorily concluded that the LMRA did not preempt the WPCL.[4]

The Fourth Circuit has also concluded that the LMRA preempts all state-law WPCL claims based on collective bargaining agreements. In holding that the LMRA preempted the former employees' WPCL action seeking severance pay and unpaid vacation benefits, the Fourth Circuit explained its rationale as follows:

> The West Virginia statute provides various procedures and remedies, such as liquidated damages, attorney's fees, and a generous statute of limitations, to facilitate an employee's collection of wrongfully withheld pay and wages. The statute does not, however, grant any entitlements to pay or wages, and the appellants have not contended that it does. Thus, despite their assertions that their claims arise wholly under the West Virginia statute, the appellants' complaint in state court shows that any substantive right they might have to recovery of vacation and severance pay would require interpretation of the collective bargaining agreement. Under the doctrine of *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), those claims are therefore preempted: "[A]pplication of state law is preempted by § 301 . . . if such application

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[4] See, *e.g.*, *Baron v. National Standard Co.*, Civ. A. No. 93-CV-4953, 1994 WL 158883 (E.D. Pa. Apr. 28, 1994); *Lawrence v. Regal*, Civ. A. No. 91-742, 1993 WL 652827 (W.D. Pa. Feb. 19, 1993), *aff'd* 19 F.3d 643 (3d Cir. 1994); *District 5, United Mine Workers of Am. v. Weiss* (*In re Weiss*), 129 B.R. 51 (Bankr. W.D. Pa. 1991); *Rimkus v. Atlantic Richfield Co.*, Civ. A. No. 88-5640, 1989 WL 54023 (E.D. Pa. May 18, 1993); *Wallitsch v. Corona Corp.*, Civ. A. No. 87-2239, 1988 WL 30037 (E.D. Pa. Sept. 28, 1988); *Nicholas v. St. Agnes Medical Ctr.*, Civ. A. No. 84-5882, 1987 WL 5248 (E.D. Pa. Jan. 8, 1987).

> requires the interpretation of a collective-bargaining agreement." *Barton v. Creasey Co. of Clarksburg*, 900 F.2d 249, 1990 WL 36773, *2 (4th Cir. Mar. 13, 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 137 (1990).

See also Robbins v. Iowa Road Bldgs., Inc., 828 F.2d 1348, 1354 n.4 (8th Cir. 1987), *cert. denied*, 487 U.S. 1234 (1988) (citing approvingly in dicta Seventh Circuit decision holding federal labor law preempts WPCL claims); *Marsans v. Communications Workers of Am.*, Civ. A. No. 87-0782, 1989 WL 43831 (D. D.C. Apr. 9, 1989) (holding § 301 preempts District of Columbia statutory wage claim based on collective bargaining agreement).

In contrast to these Federal decisions, Pennsylvania courts repeatedly have refused to preempt WPCL claims based on the breach of a collective bargaining agreement covered by the LMRA.[5] In this case, the Pennsylvania Superior Court held that § 301 did not preempt Respondents' WPCL claims because the court concluded that no interpretation of the collective bargaining agreement was necessary. Despite the frequency with which this issue has arisen and the conflict that exists between Pennsylvania state and federal courts on this issue, the Pennsylvania Supreme Court denied Petitioner's petition for allowance of appeal without an opinion.

The Supreme Court of West Virginia has similarly held that the LMRA does not always preempt a state law

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[5] *See, e.g., Laborers Combined Funds of Western Pennsylvania v. Mattei*, 359 Pa. Super. 399, 518 A.2d 1296 (1986); *Amal. Cotton Garment & Allied Indus. Fund v. Dion*, 341 Pa. Super 12, 491 A.2d 123 (1985); *Ward v. Whalen*, 18 Pa. D. & C. 3d 710 (1981).

remedy based on the breach of a collective bargaining agreement. In *Lowe v. Imperial Colliery Co.*, 180 W. Va. 518, 377 S.E.2d. 652 (1988), the West Virginia Supreme Court held that the LMRA did not preempt the employees' state WPCL claims for vacation pay provided for in the collective bargaining agreement. And in *Ash v. Raven Metal Prods., Inc.*, 190 W. Va. 90, 437 S.E.2d 254 (1993), the West Virginia Supreme Court confirmed this holding even where there was an applicable arbitration clause in the contract:

> Preemption of state laws does not occur every time a collective bargaining agreement forms the basis of a state law claim, but rather, " 'only if such application requires the interpretation of a collective bargaining agreement.' " 437 S.E.2d at 259.

Courts in Illinois, Nebraska, Connecticut and Delaware have also indicated an unwillingness to preempt WPCL claims based on collective bargaining agreements. *See, Brazinski v. Transport Service Co.*, 159 Ill. App.3d 1061, 513 N.E.2d 76 (1987); *Babb v. United Food and Commercial Workers District Union*, 233 Neb. 826, 448 N.W.2d 168 (1989); *Shortt v. New Milford Police Dept.*, 212 Conn. 294, 562 A.2d 7 (1989); *General Motors Corp. v. Local 435, UAW*, 546 A.2d 974 (Del. 1988). And while other state courts may not have specifically addressed the preemption of state WPCL statutes by § 301, forty-eight states have WPCL statutes that appear to provide remedies for the breach of collective bargaining agreements covered by the LMRA.[6] The potential for conflict is thus enormous.

In sum, state and federal courts are currently split concerning when the LMRA preempts state-law WPCL

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[6] See Appendix H.

claims based on the breach of a collective bargaining agreement covered by the LMRA. State courts in Pennsylvania and West Virginia have followed this Court's *Lueck/Caterpillar/Lingle* precedents by holding that § 301 does not preempt state-law WPCL claims for the breach of a collective bargaining agreement unless "interpretation" of the collective bargaining agreement is required. In direct conflict are the decisions of the Federal courts in these States and the Seventh Circuit, which have followed this Court's *Lincoln Mills/Lucas Flour* precedents by holding that federal labor laws preempt *all* state-law WPCL claims for the breach of a collective bargaining agreement covered by the LMRA. Because State and Federal courts are so divided on an issue concerning the breach of a collective bargaining agreement governed by the LMRA – an issue central to our federal labor law scheme – this Court should grant certiorari to resolve this conflict.

II. State and Federal Courts are Also Split on the Personal Liability of Corporate Officers for the Breach of a Collective Bargaining Agreement Covered by the LMRA.

State and federal Courts are also currently divided on the personal liability of corporate officers for the breach of a collective bargaining agreement covered by the LMRA. Courts in Pennsylvania and West Virginia have diverged from the opinions of federal courts in the Third and Seventh Circuits that have held that the federal labor law definition of "employer" preempts the definition found in state WPCLs. The impact of this distinction is significant, for federal courts have long held that corporate officers are not personally liable for the breach of a

collective bargaining agreement absent a showing sufficient to pierce the corporate veil.

Despite this formidable body of federal case law, the lower courts in this case held Petitioner personally liable without any showing that the corporate veil should be pierced. Indeed Pennsylvania state courts have repeatedly found corporate officers personally liable without any showing sufficient to pierce the corporate veil. As stated by the Pennsylvania Superior Court in *Laborers Combined Funds v. Mattei*,

> Of those courts which have had occasion to rule on the personal liability of corporate officers in the face of a corporation's failure to make its required contributions to various union funds, as provided for in their collective bargaining agreement, all have, without exception, held the officer(s) of the corporation personally liable, and they did so without reference to any proof of culpability or scienter as a sine qua non to establishing a contravention of the Act in a civil suit.

359 Pa. Super. 399, 407, 518 A.2d 1296, 1300-01 (1986).[7]

In *Goodwin v. Willard*, 185 W. Va. 321, 406 S.E.2d 752 (1991), the Supreme Court of West Virginia reached a similar decision.

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[7] *See, e.g., Amalgamated Cotton Garment and Allied Indus. Fund v. Dion*, 341 Pa. Super. 12, 491 A.2d 123 (1985); *Amalgamated Cotton Garment and Allied Indus. Fund v. Campolong*, 317 Pa. Super. 150, 463 A.2d 1129 (1983); *Ward v. Whelan*, 18 Pa. D. & C. 3d 710 (C. P. Allegheny Co. 1981).

> An officer in the management of a corporation who knowingly permits the corporation to violate the provisions of the Wage Payment and Collection Act, W. Va. Code, Sections 21-5-16 (1981) (Replacement Vol.), may be held personally liable for unpaid wages, fringe benefits and liquidated damages under W. Va. Code, Section 21-5-4. 406 S.E.2d at 757.

See, also Mullins v. Venable, 297 S.E.2d 866 (W. Va. 1982). Courts in Colorado, Illinois, New Hampshire and Kansas also have held corporate officers personally liable for WPCL judgments absent a showing sufficient to pierce the corporate veil. See *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532 (Col. Ct. App. 1992); *Johnson v. Western Amusement Corp.*, 151 Ill. App.3d 873, 510 N.E.2d 991 (1987); *Caswell v. BLI Genetics, Inc.*, 121 N.H. 1048, 437 A.2d 321 (1981); *State ex rel. McCain v. Erdman*, 607 P.2d 78 (Kan. Ct. App. 1980). In all, twenty-nine states have statutes that impose personal liability on corporate officers absent a showing sufficient to pierce the corporate veil.[8]

These decisions are in conflict with the decisions of federal courts in the Third Circuit that have held that the definition of "employer" in the LMRA and NLRA preempts the definition in the WPCL. While the WPCL claim in *Wheeler v. Graco Trucking Corp.*, 985 F.2d 108 (3d Cir. 1993), *reh'g denied*, (Feb. 18, 1993), was brought against the corporation rather than an officer in his individual capacity, the Third Circuit did state in *dicta* that the WPCL definition of employer was "subsumed within the federal common law." 985 F.2d at 114, n.2. This dicta

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[8] See Appendix I.

confirms the persuasive analysis earlier adopted by lower courts in the Third Circuit. As stated by the Bankruptcy Court for the Western District of Pennsylvania in *In re District 2, United Mine Workers*, 67 B.R. 883 (Bankr. W.D. Pa. 1986):

> Clearly then, the questions of "employer" and "employee" status are paramount concerns of the federal labor scheme – for if one is found not to be an "employer" or "employee," the remainder of the labor statute's provisions may be completely inapplicable . . . .
>
> While there remain some areas of labor law which are not controlled by federal legislation, the determination as to whether parties are under the auspices of said legislation is of regnant concern, and in this particular respect, it appears that Congress has chosen to occupy the field to the exclusion of the States. *Id.* at 886.

See also Lawrence v. Regal, Civ. A. No. 91-742, 1993 WL 652827 (W.D. Pa. Feb. 19, 1993); *In re Weiss*, 129 B.R. 51 (Bankr. W.D. Pa. 1991).

The decisions of state courts are also in conflict with the Seventh Circuit which has held that officer liability for a WPCL claim for the breach of a collective bargaining agreement must be resolved by reference to federal common law. In *Evans v. Einhorn*, 855 F.2d 1245 (7th Cir. 1988), the Seventh Circuit adopted the reasoning of the district court in holding that an employee could not use the Illinois WPCL to enforce a federal labor arbitration award against an individual officer. In reaching this decision the district court had characterized the employee's attempt to

use the Illinois WPCL to enforce a federal labor arbitration award as "a straight forward § 301 breach of a collective bargaining agreement action." *Id.* at 1256.

> "The question of from whom an arbitration award can be collected falls within the federal common law governing enforcement of arbitration awards. The Court further holds that officer or other third-party liability for federal labor arbitration awards must be resolved by reference to the federal labor common law created by Congress with the enactment of § 301(a), and is not a subject which Congress intended to be left to state regulation. *See John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 548, 84 S.Ct. 909, 914 [11 L.Ed.2d 898] (1964) (federal law governs issues as to successor corporation's duty to honor arbitration provision contained in collective bargaining agreement between union and merged corporation in action brought under § 301(a)). *Id.* at 1255.

The Courts of Appeals agree that "[w]hether a company or individual is responsible for the financial obligations of another company or individual is a question of federal law when it arises in the context of a federal labor dispute." *NLRB v. Fullerton Transfer & Storage Ltd., Inc.*, 910 F.2d 331, 325 (6th Cir. 1990).[9] As this Court has stated,

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[9] *See also NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047, 1051 (10th Cir. 1993); *Contractors, Laborers, Teamsters and Engineers Health and Welfare Plan v. Hroch*, 757 F.2d 184, 190 (8th Cir. 1985); *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416 (D.C. Cir. 1984); *Goodman Piping Prods., Inc. v. NLRB*, 741 F.2d 10 (2d Cir. 1984); *NLRB v. Al Bryant, Inc.*, 711 F.2d 543 (3d Cir. 1983) *cert. denied*, 464 U.S. 1039 (1984); *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18 (1st Cir.), *cert. denied*, 464 U.S. 892 (1983); *Seymour v. Hull & Moreland Eng'g*, 605 F.2d 1105, 1109 (9th Cir. 1979).

"[t]he insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402-03 (1960). In extreme circumstances, the personal assets of a controlling shareholder may be attached to satisfy the debts and liabilities of the corporation. However, the corporate veil should be pierced only reluctantly and cautiously. *Cascade Energy and Metals Corp. v. Banks*, 896 F.2d 1557, 1576 (10th Cir.), *cert. denied*, 498 U.S. 849 (1990). Although there is no one test for deciding when to disregard the corporate form and bind the owner-operators of a closely-held corporation, most cases can be decided by reference to three factors first enunciated by a panel of the Ninth Circuit:

> Viewing the jumble of federal decisions together, we find a sort of generalized federal substantive law of disregard of corporate entity which concentrates on three general factors: the amount of respect given to the separate identity of the corporation by its shareholders, the degree of injustice visited on the litigants by recognition of the corporate entity, and the fraudulent intent of the incorporators. *Seymour v. Hall & Moreland Eng'g*, 605 F.2d 1105, 1111 (9th Cir. 1979).

The mere fact that a corporation breaches a contract does not mean that the individual shareholders of the corporation should be held personally liable. To the contrary, the corporate form of doing business is typically selected precisely so that the individual shareholders will not be liable. Nor is the mere fact that the company ceased operations without being able to pay all of its debts the sort of injustice sufficient to pierce the corporate veil. *See Scarbrough v. Perez*, 870 F.2d 1079, 1084 (6th

Cir. 1989); *Contractors, Laborers, Teamsters and Engineers Health and Welfard Plan v. Hroch*, 757 F.2d 184, 191 (8th Cir. 1985). This form of "injustice" is present in most cases involving a bankrupt entity. Instead, the individual who is sought to be charged personally with corporate liability must have shared in the moral culpability or injustice.

As stated by the district court in *Evans v. Einhorn*, 855 F.2d 1245 (7th Cir. 1988):

> A uniform federal common law to resolve officer and third-party liability for labor arbitration awards is no less important to the national labor policy implemented by Congress than is the uniform federal law governing actions to compel arbitration, or the uniform federal law governing actions to enforce arbitration awards. Certainty and uniformity in the area of officer and third-party liability for labor arbitration awards are desirable because they will encourage labor and management to enter into collective bargaining agreements containing binding arbitration and no-strike provisions. *Id.*, at 1256.

Accordingly, this Court should conclude, as did the NLRB in *Riley Aeronautics Corp.*, 178 NLRB 495 (1969), that

> [t]o require [the individual] to make good the corporation's backpay liability out of [his] personal funds would operate to defeat the very purpose of [his] incorporating the business to escape individual liability. If the corporate funds are insufficient to meet the backpay obligation, [Respondents'] recourse is that of 'creditor[s],' which includes enforcing the claim in insolvency or bankruptcy proceedings. *Id.*, at 501.

In sum, the decisions of state courts holding that the WPCL can be used to impose personal liability on individual officers for the breach of a collective bargaining agreement are in direct conflict with decisions of federal courts in the Third and Seventh Circuit. The decisions of the state courts are also in conflict with a formidable body of federal case law that forbids the imposition of personal liability on a corporate officer for the breach of a collective bargaining agreement absent a showing sufficient to pierce the corporate veil. There can be little doubt that the identity of the primary participants in the federal labor scheme is of paramount concern to that system. Accordingly, this Court should grant this Petition for Certiorari to resolve the division that currently exists between state and federal courts on this important issue of federal labor law.

III. The Pennsylvania Superior Court's Misreading of *Complete Auto Transit, Inc. v. Reis* Does Not Diminish the Reasons for Granting the Writ.

As set forth above, federal labor law preempts Respondents' claims under the WPCL, both because they seek a remedy for the breach of a collective bargaining agreement covered by the LMRA and because they seek to hold a corporate officer personally liable for such a breach absent a showing sufficient to pierce the corporate veil. Because Respondents' claims are so preempted, the Pennsylvania Superior Court erred by entering judgment for Respondents on the basis that *Complete Auto* precluded Petitioner's defenses.

Moreover, as foreshadowed in the above discussion concerning the piercing of the corporate veil, the Pennsylvania Superior Court's *Complete Auto* holding was as ironic as it was unnecessary. As stated in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 249 (1962), § 301 "evidences 'a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it.' " In short, the purpose of *Complete Auto* was to place union members on equal footing with the individual shareholders and officers of the employer company so that federal labor laws would be a carefully balanced battle between the Company and the Union.[10] The Pennsylvania Superior Court has ironically invoked *Complete Auto* to destroy that balance.

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[10] *See Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 426 (1981) (Burger C.J., joined by Rehnquist then-J., dissenting) ("Congress intended this provision to give union members a protection analogous to that afforded stockholders in corporations against personal liability for corporate acts); *Combs v. Indyk*, 554 F.Supp. 573, 575 (W.D. Pa. 1982) ("insulation of corporate officers and agents from liability for section 301 violations was, in part, a basis for the parallel insulation of officers and members of local unions from liability for section 301 violations"); S.Rep. No. 105, 80th Cong., 1st Sess. 16 (1947) ("members of the union would secure all the advantages of limited liability without incorporation"); 93 Cong. Rec. 6283 (1947) (Rep. Case of South Dakota: "The objection to suits against labor organizations has stemmed from a proper resentment against the travesty that took place in the old Danbury Hatters case where individual members of a union were harried and their property attached to satisfy a judgment for action taken by officers whom they did not control. It was as bad as such action would be against minority and individual stockholders of a corporation for acts they could not control.").

Lastly, and most importantly, the *Complete Auto* portion of the Pennsylvania Superior Court's decision is not only superfluous and ironic – it's wrong. This Court's opinion in *Complete Auto* prohibited the imposition of a *damages remedy* against individual employees. This holding was not intended to deprive employers of other remedies or defenses. As stated by the majority in *Complete Auto*, "an employer may discharge, or otherwise discipline, an employee who unlawfully walks off the job." *Complete Auto*, 451 U.S. at 417 n. 18. This Court recently reaffirmed this principle by stating that "[w]e have squarely held that § 301 authorizes suits by and *against individual employees* as well as between unions and employers." *Groves v. Ring Screw Works, Ferndale Fastener Div.*, 498 U.S. 168, 172 (1990), *citing Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562, (1976) (emphasis added). *Cf. Atkinson v. Sinclair Refining Corp.*, 370 U.S. 238, 244, (1962) (discussing without condemnation arbitration proceeding in which employer was alleged to have withheld employees' wages as discipline for breach of their no-strike clause).

The fact that Petitioner's assertion of defenses based on the no-strike clause and refusal to work may indirectly impose "damages" against Respondents by depriving them of their wages and benefits is irrelevant. Numerous courts have allowed employers' to assert defenses based on failure to exhaust grievance procedures or the expiration of § 301's statute of limitations.[11] These courts have

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[11] *See, e.g., Samples v. Ryder Truck Lines, Inc.*, 755 F.2d 881 (11th Cir. 1985); *Baron v. National Standard Co.*, Civ. A. No. 93-CV-4953, 1994 WL 158883 (E.D. Pa. Apr. 28, 1994); *Barton v.*

not invoked *Complete Auto* to nullify these defenses, despite the fact that these defenses have "indirectly" imposed "damages" against the employees by defeating their claims for wages and benefits.

Even if this Court were to hold that LMRA § 301 does not preempt an employee's WPCL claims for the breach of a collective bargaining agreement governed by the LMRA, it would be incorrect to hold that an employer's defenses based on state law or clear violations of the agreement are "preempted." Under this Court's labor law precedents, a state law cannot be sustained where it "frustrate[s] the federal scheme," *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985) (quotation omitted). It is hard to imagine a state regulation more frustrating to the carefully balanced federal scheme than one that establishes a parallel universe in which employees are vested with additional weapons, while employers have their weapons "preempted." Accordingly, if this Court holds that LMRA § 301 does not preempt an individual employees' WPCL claims for the breach of a collective bargaining agreement covered by the LMRA, it must similarly insulate an individual employer's state-law defenses.

In sum, the Pennsylvania Superior Court erred in holding that Respondents' claims were not preempted because of this Court's holding in *Complete Auto*. The possible preclusion of *Petitioner's defense* is irrelevant to

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Creasey Co. of Clarksburg, 718 F. Supp. 1284 (N.D. W. Va. 1989), *aff'd*, 900 F2d. 249, *cert. denied*, 498 U.S. 849 (1990); *Local 921, Amalgamated Clothing and Textile Workers Union v. Estate of Schmidt*, 684 F.Supp. 601 (W.D. Wis. 1988).

whether *Respondents' claims* are preempted. Furthermore, this Court's holding in *Complete Auto* precludes only § 301 *damage actions* against individual employees, not *defenses*. Lastly, even if this Court were to hold that Respondents' claims are not preempted, it should similarly insulate Petitioner's defenses, since to hold otherwise would frustrate the federal labor law scheme.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to the Superior Court of Pennsylvania.

Of Counsel:

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Respectfully submitted,

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(412) 355-6500

Attorneys for Petitioner, David Benjamin

APPENDIX A

The Supreme Court of Pennsylvania
Western District

CHARLES W. JOHNS, ESQUIRE
Prothonotary
IRMA T. GARNDER
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
15219-2463
(412) 565-2816

March 28, 1994

Carl A. Belin, Jr., Esquire
BELIN & KUBISTA
15 North Front Street
Clearfield, PA 16830-0001

In Re: Thomas Adam, et al. v. David Benjamin, Harry Benjamin and Sally Benjamin, a/k/a Sally Gold v. International Union, United Mine Workers of America
Petition of: David Benjamin
No. 0559 W. D. Allocatur Docket 1993

Dear Mr. Belin:

The Court has entered the following Order on your Petition for Allowance of Appeal filed in the above-captioned matter:

"PER CURIAM:

AND NOW, this 28th day of March, 1994, the Petition for Allowance of Appeal is hereby denied.

Mr. Justice Frank J. Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to the unavailability of Mr. Justice Rolf Larsen, see No.

127 Judicial Administration Docket No. 1, filed October 28, 1993."

Very truly yours,

/s/ Irma T. Gardner
DEPUTY PROTHONOTARY

ITG:11b
cc: Claudia Davidson, Esquire
William Manion, Esquire

APPENDIX B

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

DAVID A. SZEWCZAK, ESQUIRE
Prothonotary

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

1015 Grant Building
Pittsburgh, Pa. 15219
(412) 565-7592

August 31, 1993

Carl A. Belin, Jr., Esquire
15 North Front St.
Clearfield, Penna. 16830

In Re: Thomas Adam, et al. v. David Benjamin, et al. v. International Union, et al.
No. 1652 Pittsburgh, 1992 –

Dear Mr. Belin:

The Court has entered the following order on your application for reargument/reconsideration of the above-captioned matter:

ORDER OF COURT

"The court hereby denies the application filed July 14, 1993, requesting reargument or reconsideration of the decision dated June 30, 1993.

Date: August 31, 1993 Per Curiam"

Very truly yours,

/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV:bnl
cc: Claudia Davidson, Esq.
William Manion, Esq.
Hon. Norman Callan

APPENDIX C

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

THOMAS ADAM, et al

-v-

DAVID BENJAMIN, et al

-v-

INTERNATIONAL UNION, UNITED
MINE WORKERS OF AMERICA,

APPEAL OF: DAVID BENJAMIN

NO: 1652 PITTSBURGH, 1992

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of BLAIR County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY

DATED: June 30, 1993

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ADAM v. BENJAMIN
[426 Pa.Superior Ct. 543, (1993).]

627 A.2d 1186

Thomas ADAM, Thomas Bailey, Andrew Bakaysa, Charles Bakaysa, John Bakaysa, Edward Barrett, Carl Baum, Clair Baum, Jack Baum, Jack Baumgartner, James Beatty, Carl Beck, Evertt Bell, Gregg Bell, Thomas Bell, Albert Bell, Donald Bennett, Fred Bennett, Raymond Bennett, Richard Bennett, Ronald Bennett, Barney Bensky, Robert Berlin, John Bishop, Harry Biss, L. Carl Blake, Walter Blume, William Blume, Gray Bond, Dennis Bouch, Ronald Bouch, Darryl Bowser, Paul Bracken, Robert Bracken, Christopher Bracken, Christopher Brink, Daniel Brink, Glen Brink, James Brink, Dale Brooks, Edgar Brothers, James Buck, William Buck, Richard Byers, Ernest Cauldwell, Brian Cameron, Jeff Cameron, Kevin Cameron, Albert Chiplis, Franklin Clark, Roy Clark, William Clark, James Clutter, William Collins, Joseph Craft, John Curry, Edwin Daugherty, Edward Davies, Terry Davies, Richard Delp, Bernard Diehl, Norman Diehl, Charles Dillon, Donald Dimmick, Robert Dufour, David Eger, William Eneminger, Gary Farmery, William Farmery, Douglas Feaster, Irvin Feaster, Jay Fishel, William Fleming, Delwyn Fry, Donald Fyock, Gregory Gardner, Myrel Gardner, Thomas Gardner, Roger Geist, Kenneth Gilbert, Ronald Gill, Joseph Glass, Jr., Joseph Glass, Sr., John Gowin, Andrew Haag, Charles Haag, Leslie Hamilton, Russell Harpster, Walter Hauck, Daniel Hewitt, John Hewitt, David Hoover, Richard Hurd, Gerald Hutton, Robert Hutton, Robert Johns, James Johnson, Ronald

Johnston, Thomas Kawa, Clair Keller, Jeffrey Kelly, Albert Kitchen, Arthur Kitchen, David Kitchen, George Kitchen, Guy Kitchen, Larry Kitchen, Sherman Kitchen, Jerry Kline, Paul Kovalchik, Sherman Krause, Barry Kruise, Donald Kruise, Ronald Kruise, Terry Kruise, George Kurtz, Danny Kutruff, Melvin Leamer, Andrew Lechene, Robert Lee, Terry Lender, Alan Lewis, David Lewis, Theron Lewis, William Lewis, David Lightner, Kevin Lockett, Byron Long, David Long, Paul Long, Douglas Lucas, Charles Lunger, David Lydic, Ernest Lyons, Thomas Mahaffey, Sterry Mahaffey, Jr., Leonard Martin, Willis Maruna, John Matia, Joseph Mazenko, Jack McCraken, Thomas McCraken, Thomas McElleny, Eldon McGarry, Donald McGarvey, John Thomas McGee, William Wallace McGee, Ronald Meckley, Terry Miller, James Mills, David Moore, James Mowery, Martin Mulhollen, Thomas Nellen, Jerome Nevling, Joel Martin Passmore, Charles Peach, Robert Pearce, Charles Pennington, Robert Pennington, Ronald Phillipi, Ivan Pierce, Thomas Pontzner, David Queen, Richard Queen, Robert Reitz, Dennis Robbins, Eugene Romagna, John Rose, Charles Ross, John Ross, Thomas Ross, Randy Rowles, Harry Rogh, Donald Sheeder, Larry Schomo, Robert Schomo, Vernon Simmons, Robert Sinclair, Donald Smeal, Garry Smeal, Phillip Smeal, Robert Smeal, Dennis Smith, John Smith, Robert Smith, Raymond Smyers, Richard Snyder, Joseph Soltys, Thomas Spangle, Duane Spencer, Ronald States, Arthur Stiver, Harold Stiver, Irvin Stiver, Duane Strong, Donald Sunderland, Thomas Swauger, James Taylor, Gerald Timchak, Edward Tkacick, Jerbert Von Scoyoc, Lewis Wagner, Michael Wagner,

Ronald Wagner, Russell Wallace, George Warholic, Robert Washic, John Weaver, Daniel Webster, Ellis Westover, Gordon Westover, James Westover, Lemoine Westover, Joseph Whitton, Charles Wilkinson, Frank Williams, Thomas Williams, Robert Witherite, Robert Woods, Michael Wright, Robert Wright, Dale Yarger, Gary Yarger, Kenneth Yarger, Dennis Young, John Young and Larry Young

v.

David BENJAMIN, Harry Benjamin and Sally Benjamin, a/k/a Sally Gold

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,

Appeal of David BENJAMIN.

Superior Court of Pennsylvania.

Argued April 15, 1993.

Filed June 30, 1993.

Reargument Denied Aug. 31, 1993.

Employees brought action against officers/directors of employer, including individual who was president and treasurer of board of directors, seeking wage recoupment under state Wage Payment and Collection Law (WPCL). The Court of Common Pleas, Blair County, Civil Division, No. 89-CD-1925, Callan, J., granted employees motion for summary judgment, and defendants appealed. The Superior Court, No. 1652 Pittsburgh 1992, Popovich, J., held that employees' state-law wage recoupment claim was not preempted by federal labor law as resolution of claim

did not necessitate an interpretation of collective bargaining agreement.

Order affirmed.

Wieand, J., filed concurring statement.

Carl A. Belin, Jr., Clearfield, for appellant.

Claudia Davidson, Pittsburgh, for appellees.

Before WIEAND, POPOVICH and HESTER, JJ.

POPOVICH, Judge:

We are asked to review the appeal of an order (reduced to judgment[1]) of the Court of Common Pleas of Blair County granting a motion for summary judgment against the defendant/appellant, David Benjamin.[2] We affirm.

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[1] At the time the order granting the motion for summary judgment was entered, there was no dollar amount affixed for damages. Thereafter, on the 20th day after the grant of the motion, the plaintiffs filed a second motion to fix the amount of the judgment. The court, after reviewing the pleadings, entered an order awarding the plaintiffs $646,826.14 in wages/benefits, attorney fees/costs, and liquidated damages. This order was reduced to judgment and an appeal followed. See Pa.R.App.P. 301(a), (d).

[2] Co-defendants Harry and Sally Benjamin were not named in the plaintiffs' motion for summary judgment. The motion listed David J. Benjamin only as the party against whom judgment was being sought. The other co-defendants are not parties to the instant appeal.

As an appellate court, the standard by which we assess the propriety of a motion for summary judgment is well-established; to-wit:

> . . . we are bound to consider certain principles which dictate when and under what circumstances a trial court may properly enter summary judgment. The trial court must accept as true all well-pleaded facts in the non-moving party's pleadings, and give to him or her the benefit of all reasonable inferences to be drawn therefrom. Summary judgment should not be entered unless the case is clear and free from doubt. A grant of summary judgment is proper where the pleadings, depositions, answers to interrogatories and admissions on file support the lower court's conclusion that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. We will overturn a trial court's entry of summary judgment only if there has been an error of law or a clear abuse of discretion.

Lower Lake Dock v. Messinger Bearing, 395 Pa.Super. 456, 577 A.2d 631, 634 (1990).

The facts underlying this case are as follows: On November 6, 1989, two-hundred and twenty-seven employees/plaintiffs of the Benjamin Coal Company filed a complaint against the officers/directors of the Company, one of whom was the defendant/appellant, David Benjamin, president and treasurer of the board of directors. Paragraph 228; see note 2, supra.

The plaintiffs alleged that, despite a work agreement between the union and the Company, they were informed on June 21, 1989, "there was no more work and not to return to the production site." The plaintiffs claimed, as result of the cessation of operations, they were owed wages (for the period from May 28th to June 21st of 1989) and fringe benefits (vacation time, sickday pay, and monies intended but never used to purchase U.S. Savings Bonds).

The plaintiffs asserted that all monetary items were "wages" entitled to recoupment under Pennsylvania's Wage Payment and Collection Law, (WPCL) 43 P.S. § 260.1 *et seq.*, the amount of which was $479,022.56. See note 1, supra.

Numerous pleadings were filed before the plaintiffs submitted a motion for summary judgment averring that the defendant, a corporate officer and board member of the Company,[3] was liable personally for the wages and benefits sought to be recovered.

In reply to the motion for summary judgment, the defendant argued that the plaintiffs' union (United Mine Workers of America) failed to file a claim in the Company's bankruptcy, an omission which defendant contended foreclosed the plaintiffs from seeking recovery under WPCL. Paragraph 8. Also, the defendant noted that the labor stoppage by the plaintiffs on June 21, 1989,

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[3] There is no dispute that the defendant is an "employer" within the meaning of WPCL. See 43 P.S. § 260.2a; Plaintiffs' Motion for Summary Judgment, Paragraphs 12-15; Defendant's Answer to Motion for Summary Judgment, Paragraphs 12-15.

resulted in its "funds" being "frozen" by its banks, and this impaired its ability to meet its payroll obligations to the plaintiffs. Further, the defendant asserted that the work stoppage was violative of the collective bargaining agreement and was the "proximate cause" of "freezing" the Company's available assets to pay wages, benefits, and prompted the Company to convert its Chapter 11 bankruptcy to a Chapter 7. Defendant's Answer to Motion for Summary Judgment, Paragraphs 3, 6 & 8.

By order of court, the plaintiffs' motion was granted and, in the course thereof, the defendant's argument that the federal Labor Management Relations Act (LMRA) preempted Pennsylvania's WPCL was found wanting. The court also ruled that the (alleged) conduct of the plaintiffs, subsequent to the termination of employment (on June 21, 1989), did not impact upon the right to recover under WPCL wages earned prior thereto nor was a condition to recovery the filing of a claim in bankruptcy. This appeal followed.

The initial issue we shall address, which is of first impression in this jurisdiction, concerns the averment that federal legislation preempts Pennsylvania's WPCL because the defendant's response (defense) to the plaintiffs' suit for wages "involves the construction of th[e] labor agreement". Additionally, the defendant contends that the work stoppage by the plaintiffs was violative of the limited "no-strike" clause appearing in Article XXIX of the agreement, and, as such, the federal LMRA is implicated and preempts the field of law to resolve the matter to the exclusion of Pennsylvania's WPCL. Appellant's Brief at 30.

Section 301(a) of the LMRA of 1947, 61 Stat. 136, 156, 29 U.S.C. § 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

In evaluating the contention of the defendant, we look to *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988) for guidance. There the Court concluded that an Illinois employee covered by a collective bargaining agreement, which provided for a contractual remedy for discharge without cause, could enforce a statelaw remedy for retaliatory discharge.

In deciding that Section 301 did not preempt Illinois' wrongful discharge law, the *Lingle* Court held that the employee's claim would be preempted if any collective bargaining agreement needed to be interpreted in resolving the claim;[4] to-wit:

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[4] The defendant's argument that the plaintiffs' violation of the "no-strike" clause (as a defense to payment under WPCL) should be the focus of inquiry is incorrect. We need to look to whether the dispute as *a whole* necessitates inquiry into the collective bargaining agreement for resolution. *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 405-06, 108 S.Ct. 1877, 1881-82 (1988).

Further, "the pre-emptive force of § 301 . . . displace[s] entirely any state cause of action 'for violation of contracts

Thus, *[Allis-Chalmers Corp. v.] Lueck*[, 471 U.S. 202, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985),] faithfully applied the principle of § 301 preemption developed in *[Teamsters v.] Lucas Flour*[, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962)]: *if the resolution of a state-claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted and federal labor law principles . . . must be employed to resolve the dispute.*

* * *

Illinois courts have recognized the tort of retaliatory discharge for filing a worker's compensation claim, and have held that it is applicable to employees covered by union contracts. "[T]o show retaliatory discharge, the plaintiff must set forth sufficient facts from which it can be inferred that (1) he was discharged or threatened with discharge and (2) the employer's motive in discharging or threatening to discharge him was to deter him from exercising his rights under the Act or to interfere with his exercise of those rights." *Each of these purely factual questions pertains to the conduct of the employee and the conduct and motivation of the employer. Neither of the elements requires a court to*

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between an *employer and a labor organization.' " Franchise Tax Bd. of Calif. v. Construction Laborers Vacation Trust for Southern Calif.*, 463 U.S. 1, 23, 103 S.Ct. 2841, 2853, 77 L.Ed.2d 420 (1983) (Emphasis added; citation omitted).

Here, the dispute is between the individual employees (in contrast to the union organization) and the employer/Company. In this situation, a state-law complaint for breach of *individual* employment contracts is not "completly preempted" by Section 301. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987).

> *interpret any term of a collective-bargaining agreement.* To defend against a retaliatory discharge claim, an employer must show that it had a nonretaliatory reason for the discharge; this purely factual inquiry likewise does not turn on the meaning of any provision of a collective-bargaining agreement. Thus, *the state-law remedy in this case is "independent" of the collective-bargaining agreement in the sense of "independent" that matters for § 301 pre-emption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement.*
>
> * * *
>
> . . . [W]hile there may be instances in which the National Labor Relations Act pre-empts state law on the basis of the subject matter of the law in question, § 301 pre-emption merely ensures that federal law will be the basis for interpreting collective-bargaining agreements, and says nothing about the substantial rights of a State may provide to workers when adjudication of those rights does not depend upon the interpretation of such agreements. In other words, even if dispute resolution pursuant to a collective-bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, *as long as the state law claim can be resolved without interpreting the agreement itself, the claim is "independent" of the agreement for § 301 pre-emption purposes.*

486 U.S. at 405-07, 408-10, 108 S.Ct. at 1881-82, 1883-84 (Footnotes omitted; Citations omitted; Emphasis added).

Moreover, in the usual case in which Section 301 is alleged to preempt state law, the state law claim is not a

contract claim but a tort claim, and the issue is whether "resolution of [the] state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220, 105 S.Ct. 1904, 1916 (1985).

The basis of the state-law claim in this case is that the employees were due wages for work performed, the recovery of which is provided for in a state statute (WPCL). *However, the defense asserted calls for inquiry into the legitimacy of an alleged work stoppage facially prohibited by the limited "no-strike" clause of the bargaining agreement between the union and management.* This would, at first blush, appear to call into play the preemptive effect of LMRA. *Id.*

Upon close scrutiny of the facts against the backdrop of the applicable law, it must be remembered that damages are not permitted to be entered against individual employees as a result of a breach of a no-strike provision in a collective bargaining agreement.[5] *Complete Auto*

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[5] The defendant's recourse in such an instance would be to file suit for breach of contract against the *labor union* under Section 301 of the LMRA. This could be filed in federal or state court. See *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483 (1962); *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 102, 82 S.Ct. 571, 576, 7 L.Ed.2d 593 (1962).

Also, the defendant could file a complaint with the National Labor Relations Board (NLRB) on the ground that the *union* engaged in an unfair labor practice in directing its members to strike in violation of the no-strike clause in the collective bargaining agreement. The two claims are not mutually exclusive.

Transit, Inc. v. Reis, 451 U.S. 401, 101 S.Ct. 1836, 68 L.Ed.2d 248 (1981); *California Electric Co. v. Briley*, 939 F.2d 790, 794 (9th Cir.1991). Therefore, the provision of WPCL allowing for a "good faith" defense (asserted by the defendant as a violation of the no-strike provision of the bargaining agreement) is to no avail. To find, *arguendo*, merit in such a claim (set-off or counter-claim) under WPCL would be of no force or effect. The remedial nature of WPCL could not be implemented because of the barring effect of federal labor law against penalizing individual employees for the unlawful acts of the union by withholding wages owed or extracting damages from the union members/employees. *Id.* Such authority springs from the Supremacy Clause of the United States Constitution.

Moreover, to find otherwise would permit the defendant to do indirectly (withhold monies due the employees under the WPCL) that which he could not do directly (hold individual employees accountable for a union's violation of a no-strike clause). See generally *Reis*, supra; *Briley*, supra.

Accordingly, because we need not resort to an interpretation of the collective bargaining agreement to evaluate the merits of the plaintiffs' wage claim, the preemptive scope of LMRA is forestalled. See *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 741, 105 S.Ct. 2380, 2390, 85 L.Ed.2d 728 (1985), where state law

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Although there is reference in the record that a complaint with the NLRB was filed, we have no insight as to whether any action was commenced under the auspices of Section 301 of the LMRA.

required employers who bought health insurance for their employees to insist on certain terms in the policies.

The state law at bar, as in *Metropolitan Life Ins. Co.*, supra, created an entitlement that was independent of the collective bargaining contract. As a result, given the nature of Benjamin's defense (conduct of the plaintiffs/employees allegedly violating the no-strike clause of collective bargaining agreement) and the limited remedial measures permitted if such were proven true, there is no occasion to engage in an interpretation of the collective bargaining agreement. Contrast *Allis-Chalmers Corp.*, supra (Right to disability benefits derived from the collective bargaining agreement and was defined by the contractual obligation of good faith so as to trigger the preemptive effect of Section 301); *California Elec. Co. v. Briley*, 939 F.2d 790 (9th Cir.1991) (Employer's state suit against employees for quitting their jobs was preempted by Section 301 because collective bargaining agreement necessarily defined those duties owed to the employer); *McMahon v. McDowell*, 794 F.2d 100 (3rd Cir.1986) (Employees' WPCL suit to recover wages and benefits from corporate officers and directors preempted by Employee Retirement Income Security Act (ERISA) since to determine the amount of any recovery under the WPCL one could do so only by reference to the benefit plans and the provisions of ERISA); *National Metalcrafters, Div. of Keystone v. McNeil*, 784 F.2d 817 (7th Cir.1986) (Determination of whether the employer's failure to pay vacation benefits was a willful breach of the collective bargaining agreement necessitated an interpretation of the contact [sic], and, as such, was controlled by Section 301's preemption over state wage claim law).

Instantly, we hold that resolution of the plaintiffs' wage-recoupment issue does not necessitate an "interpretation" of (nor is it inextricably intertwined with) the labor agreement so as to call into play federal labor law to guide us in resolving the dispute. We do so for several reasons:

First: Plaintiffs' contention that the wages sought accrued prior to any work stoppage is not disputed by the defendant.

Second: The right to recover wages "earned" by the plaintiffs/employees upon separation from employment is a statutory remedy which supplements (rather than supplants) a common law cause of action for breach of contract, 43 P.S. § 260.9a(a); *Laborers Combined Funds of Western Pa. v. Mattie*, 359 Pa.Super. 399, 518 A.2d 1296, 1299 (1986).

Third: No contract interpretation is needed to assess the plaintiffs' right to compensation for work performed. The limited "no-strike" clause referred to by the defendant as the vehicle to draw this Court into an interpretation of the collective bargaining agreement (and with it the entire battery of federal labor law on its coat-tails) *is unpersuasive under the particular facts here.* Compare *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) (Claim did not turn on any collective bargaining agreement interpretation) and contrast with *Avco Corp. v. Machinists*, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968) (Claim required construing collective bargaining agreement).

In light of the preceding discussion, we find no merit to either the defendant's breach of collective bargaining defense or preemption argument.

The next two issues posed for our consideration ("walkout" by employees being a "good faith" defense to liability under WPCL) have been disposed of, by implication, with resolution of the initial claims. We see no need to elaborate further on the matter.

The last issue to which we will respond is the defendant's contention that the plaintiffs' failure to file a claim in the Company's bankruptcy action precludes them from seeking relief (money damages) under the banner of WPCL.

Consistent with *Mattei* [sic], supra, the independent nature of a WPCL claim dispenses with the need that a claimant precede his recoupment efforts under statutory law by seeking satisfaction of the indebtedness through the bankruptcy courts. No such circuitous route is mandated in either our state laws or federal rules. We will not, by judicial fiat, impose such a course of procedure now.

Concluding that the defendant's claims do not warrant the relief requested, we will affirm the order appealed.

Order affirmed.

WIEAND, Judge, concurring:

I join the majority's analysis. I write separately only because of my continuing belief that there is nothing discretionary about the entry of summary judgment by a trial court. Pa.R.C.P. 1035(b) permits a trial court to enter

a summary judgment if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment *as a matter of law.*" (emphasis added). Whether to enter a summary judgment is purely a question of law, and the entry of such a judgment will be reversed for an error of law. It is incorrect, therefore, to suggest that a trial court's entry of summary judgment will be reversed only for an abuse of discretion.

APPENDIX D

THOMAS ADAM, et al., Plaintiffs	:	THE COURT OF COMMON PLEAS BLAIR COUNTY, PENNSYLVANIA
v.	:	
DAVID BENJAMIN; HARRY BENJAMIN; and SALLY BENJAMIN, a/k/a SALLY GOLD, Defendants	:	89 CP 001925 CIVIL ACTION - LAW
v.	:	
INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, Additional Defendant	:	

NORMAN D. CALLAN	JUDGE
CLAUDIA DAVIDSON, ESQUIRE	ATTORNEY FOR PLAINTIFFS
PAUL GIRDANY, ESQUIRE	ATTORNEY FOR PLAINTIFFS
CARL A. BELIN, JR., ESQUIRE	ATTORNEY FOR DEFENDANTS
WILLIAM B. MANION, ESQUIRE	ATTORNEY FOR ADDITIONAL DEFENDANT

OPINION

This case comes before the Court for disposition of Plaintiffs' Motion to Affix Amount of Judgment. On July 17, 1992, Summary Judgment was granted in favor of Plaintiffs against Defendant David Benjamin under the Pennsylvania Wage Payment and Collection Law "WPCL." No amount was set at that time as the parties wished to agree on a figure and petition the Court later.

I. WAGES

Both parties agree that the amount due Plaintiffs for back wages and lost benefits would be Four Hundred Seventy Seven Thousand Four Hundred Thirty-Four Dollars and Twenty-six ($477,434.26) Cents.

II. ATTORNEY'S FEES AND COSTS

Plaintiffs are seeking Forty-One Thousand One Hundred Eighty-three Dollars and Twenty-five ($41,183.25) Cents for Attorney's fees and One Thousand Six Hundred Thirty-two Dollars and Seventy-nine ($1,632.79) Cents for costs.

Under 43 P.S. 260.9(a), Plaintiffs may receive reasonable Attorney's fees. In the case of *Barnhart v. Compugraphic Corporation,* 936 F.2d 131 (C.A. 3rd 1991). The Court of Appeals for the Third Circuit held that even if there was a good faith dispute over the back wages, employees can still collect attorney fees if they have been awarded damages. In the case at bar, therefore, attorney fees are collectable.

The only question is the amount collectable. Plaintiff's amount requested may be reasonable in Allegheny County, but in Blair County a more reasonable amount would be Ninety ($90.00) Dollars per hour. Therefore, the amount due for each Attorney would be:

1. Attorney Healy: 6.75 Hours x $90.00 = $607.50.

2. Attorney Davidson: 200.70 Hours x $90.00 = $18,063.00.

3. Attorney Girdany: 144.70 Hours x $90.00 = $13,023.00.

4. Attorney Akers: 6.10 Hours x $90.00 = $549.00.

The amount requested for law clerks and paralegals is reasonable, therefore the amount due for each would be:

1. Sherri Lowe: 10.70 Hours x $40.00 = $428.00.

2. Connie Rankin: 2.90 Hours x $40.00 = $116.00.

3. Sam Happel: 1.80 Hours x $40.00 = $72.00.

4. Clara Goldstein: 19.20 Hours x $40.00 = $768.00.

5. Linda DeBruin: 14.40 Hours x $40.00 = $576.00.

6. Denise Yacavace: 1.45 Hours x $40.00 = $58.00.

7. Lori Lassick: 7.70 Hours x $40.00 = $308.00

8. Karen Hughes: 2.70 Hours x $40.00 = $108.00.

The total amount for Attorney's fees would, thus, be Thirty-Four Thousand Six Hundred Seventy-Six Dollars and Fifty ($34,676.50) Cents.

The amount requested for costs will be granted in toto, which would be One Thousand Six Hundred Thirty-two Dollars and Seventy-nine ($1,632.79) Cents.

III. LIQUIDATING DAMAGES

Plaintiffs assert that they are entitled to liquidating damages under the "WPCL" as the Defendant acted in bad faith disputing these back wages. Under 43 P.S. 260.10, liquidating damages are applicable if it is found that the Defendant has acted in bad faith. The amount of damages under the "WPCL" is twenty-five (25%) percent of the award or Five Hundred ($500.00) Dollars, whichever is greater.

As stated in this Court's prior Opinion and Order dated July 17, 1992, the claims the Defendant made were without substance. The law allows liquidating damages in such a situation. The amount of liquidated damages is set, pursuant to the Act, at One Hundred Thirty-three Thousand Eighty-two Dollars and Fifty-nine ($133,082.59) Cents.

IV. PRE-JUDGMENT INTEREST

Plaintiffs allege that they are entitled to pre-judgment interest at the rate of six (6%) percent per annum. However, the Pennsylvania "WPCL" does not specifically provide for the award of pre-judgment interest. Plaintiffs assert that, by law, they are entitled to it because pre-judgment interest is collectable on contractual obligations. However, the "WPCL" is a statutory remedy, not a contractual remedy. The contract in the case at bar is between the Union and the Benjamin Coal Company, not David Benjamin. Therefore, pre-judgment interest is inapplicable to the case at bar.

In accordance with the foregoing Opinion, the following is deemed to be appropriate:

ORDER

AND NOW, this 25th day of September, 1992, the above captioned matter having come before the Court for disposition of Plaintiffs' Motion to Affix Amount of Judgment, after a review of the Pleadings, briefs, and applicable law; it is,

ORDERED, DIRECTED, AND DECREED that the Amount of the Summary Judgment entered on the 17th day of July, 1992, be affixed as follows:

1. Wages/Benefits	$477,434.26
2. Attorney's Fees/Costs	$36,309.29
3. Liquidating Damages	$133,082.59
TOTAL	$646,826.14

Judgment is hereby entered in favor of the Plaintiffs in the amount of Six Hundred Forty-six Thousand Eight

Hundred Twenty-Six Dollars and Fourteen ($646,826.14) Cents.

BY THE COURT:

/s/ Norman D. Callan
J.

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APPENDIX E

THOMAS ADAM, et al., Plaintiffs	:	THE COURT OF COMMON PLEAS
v.	:	BLAIR COUNTY, PENNSYLVANIA
DAVID BENJAMIN; HARRY BENJAMIN; and SALLY BENJAMIN, a/k/a SALLY GOLD, Defendants	:	89 CP 001925
v.	:	CIVIL ACTION – LAW
INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, Additional Defendant	:	

NORMAN D. CALLAN	JUDGE
CLAUDIA DAVIDSON, ESQUIRE	ATTORNEY FOR PLAINTIFFS
PAUL GIRDANY, ESQUIRE	ATTORNEY FOR PLAINTIFFS
CARL A. BELIN, JR., ESQUIRE	ATTORNEY FOR DEFENDANTS
WILLIAM B. MANION, ESQUIRE	ATTORNEY FOR ADDITIONAL DEFENDANT

OPINION

This case comes before the Court for disposition of Plaintiffs' and Additional Defendant's Motion for Summary Judgment against David Benjamin. The Plaintiffs instituted this class action against the corporate shareholders of the Benjamin Coal Company for back wages between May 28, 1989, and June 15, 1989, under the Pennsylvania Wage Payment and Collection Law, Act of 1961. 43 P.S. 260.1 *et seq.* ("WPCL"). The Plaintiffs' Motion for Summary Judgment is based on the premised fact that there is no legal defense available to the Defendant that excuses him from paying the back wages. The additional Defendant's Motion is based on the fact that the actions of the Union is irrelevant to the action complained of here.

The law as to the grant of Summary Judgment is well established. An entry of Summary Judgment may be granted only in cases where the right is clear and free of doubt. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979). Summary Judgment should be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Consumer Party of Pennsylvania v. Commonwealth*, 510 Pa. 158, 507 A.2d 323 (1986).

There is no genuine issue of material fact. All parties acknowledge that the back wages are from the time period of May 28, 1989, to June 21, 1989. The parties also agree that the Plaintiffs stopped working on June 21, 1989. This suit is for back pay due before the work stoppage.

The Pennsylvania "WPCL" provides a civil remedy to employees to collect wages due from employers. 43 P.S. § 260.1 *et seq.* Pursuant to "WPCL," the Plaintiffs are entitled to the relief requested. However, the Defendant alleges that the reason the Plaintiffs were not paid is the fact that on June 21, 1989, the Plaintiffs engaged in a work stoppage. This work stoppage is alleged to have caused the bank to terminate a credit arrangement. Defendant alleges that he informed the workers of this situation. On June 23, 1989, the bank froze the Coal Company funds and the Coal Company went into Chapter 7 Bankruptcy. Defendant now argues that since it was the actions of the Plaintiffs that forced the Coal Company into Chapter 7, Defendant contends that he is not liable for the back wages.

Even if the Defendant's allegations are true, such allegations are irrelevant to the issue at hand. Is the Defendant liable to the Plaintiffs for back wages and other benefits that accrued prior to the alleged work stoppage? The clear answer is yes. The "WPCL" explicitly states: "Separated Employees. Whenever an employer separates an employee from the payroll, or whenever an employee quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer . . . . " 43 P.S. § 260.5 (a).

The purpose of the Act is to help employees receive wages actually due to them for work already performed. Since here the back wages are due for a period in which the Plaintiffs were working, Plaintiffs' actions subsequent to June 21, 1989, are irrelevant. The actions of the Plaintiffs subsequent to June 21, 1989, do not establish a good

faith defense for Defendant concerning wages prior thereto.

Defendant now alleges that the Federal Labor Management Relations Acts ("LMRA") preempts the Pennsylvania "WPCL." This argument was found to be without merit in *Carpenter's Health and Welfare Funds v. Ambrose;* 727 F.2d 279 (3d Cir. 1983), Footnote 5. Defendant cites cases where the Federal Employment Retirement Income Security Act ("ERISA") 29 USC § 1001, *et seq.*, was found to preempt the Pennsylvania "WPCL." However, "ERISA" contains explicit language preempting state law while "LMRA" does not. In the case of *Tener v. Hoag*, 697 F. Supp. 196 (W.D. Pa. 1988), the Federal District Court held that no federal question jurisdiction existed for claims to enforce wages and fringe benefits. Defendant's Federal preemption argument lacks merit.

Defendant lastly asserts the defense that since the Plaintiffs failed to file claims for these wages with the trustee in Bankruptcy, they are precluded from doing so now. This argument was rejected in this Court's prior Opinion and Order dated the 8th day of May, 1992.

Since Defendant's defenses concerning the Union are found to be without merit as being irrelevant to this cause of action; the Union's Motion for Summary Judgment must be granted.

In light of the foregoing Opinion, the following is deemed appropriate:

ORDER

AND NOW, this 17 day of July, 1992, the above captioned matter having come before the Court for disposition of Plaintiffs' and Additional Defendant's Motions for Summary Judgment, after a review of the pleadings, briefs, and applicable law; it is,

ORDERED, DIRECTED, AND DECREED that Plaintiffs' and Additional Defendant's Motion for Summary Judgment is granted. Judgment is hereby entered in favor of the Plaintiffs against the Defendant David Benjamin. Judgment is also entered in favor of the Additional Defendant against Defendant David Benjamin.

BY THE COURT:

/s/ Norman D. Callan
J.

kl

APPENDIX F

THOMAS ADAM, et al.,	:	
Plaintiffs	:	THE COURT OF COMMON PLEAS BLAIR COUNTY, PENNSYLVANIA
v.	:	
DAVID BENJAMIN; HARRY BENJAMIN; and SALLY BENJAMIN, a/k/a SALLY GOLD,	:	89 CP 1925
Defendants	:	CIVIL ACTION – LAW
v.	:	
INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,	:	
Additional Defendant	:	

NORMAN D. CALLAN	JUDGE
CLAUDIA DAVIDSON, ESQUIRE	ATTORNEY FOR PLAINTIFFS
PAUL GIRDANY, ESQUIRE	ATTORNEY FOR PLAINTIFFS
CARL A. BELIN, JR., ESQUIRE	ATTORNEY FOR DEFENDANTS
WILLIAM B. MANION, ESQUIRE	ATTORNEY FOR ADDITIONAL DEFENDANT

OPINION

This case comes before the Court for disposition of Defendants' Motion for Summary Judgment. The Plaintiffs instituted this class action against the corporate shareholders of the Benjamin Coal Company for back wages between May 28, 1989, and June 15, 1989, under the Pennsylvania Wage Payment and Collection Law, Act of 1961, 43 P.S. 260.1 *et seq.* ("WPCL"). The Defendants' Motion for Summary Judgment is based on the premise that the Plaintiffs' had an opportunity to raise the back wage claims against the bankrupt estate, and failed to do so timely; therefore, the Plaintiffs are now estopped from bringing the suit at bar. The Plaintiff alleges that under the "WPCL," they are allowed to bring suit against the corporate officers for back pay.

The law as to the grant of summary judgment is well established. An entry of summary judgment may be granted only in cases where the right is clear and free of doubt. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979). Summary Judgment should be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Consumer Party of Pennsylvania v. Commonwealth*, 510 Pa. 158, 507 A.2d 323 (1986).

The Pennsylvania Wage Payment and Collection Law ("WPCL") provides employees a means of attempting to collect back pay from the employer. 43 P.S. § 260.1 *et seq.* Employer is defined as:

> Includes every person, firm, partnership, association, corporation, receiver, or other officer of a Court of this Commonwealth and any

> agent or officer of a Court of this Commonwealth and any agent or officer of any of the above mentioned classes employing any person in this Commonwealth.
>
> 43 P.S. § 260.2a

There is no requirement in the "WPCL" that employees must first bring any claim for back wages against the Corporation itself or the bankrupt estate of the Corporation before instituting an action under the "WPCL."

The claim made by the Plaintiffs in the case at bar is perfectly valid and the fact that they did not bring a claim against the bankrupt estate is not a defect which will defeat this valid claim under the "WPCL."

There also exists genuine issues of fact which preclude a grant of summary judgment at this time, such as the amount of money which was available in the bankrupt estate to pay these claims, if they were filed.

In light of the foregoing Opinion, the following is deemed appropriate:

ORDER

AND NOW, this 8th day of May, 1992, the above captioned matter having come before the Court for disposition of Defendants' Motion for Summary Judgment, after a review of the pleadings, briefs, and applicable statutory and case law; it is,

ORDERED, DIRECTED, AND DECREED that Defendants' Motion for Summary Judgment is denied and dismissed. The Defendant is not entitled to summary

judgment by law and genuine issues of fact exist, thus precluding summary judgment.

BY THE COURT:

/s/ Norman D. Callan
J.

kl

APPENDIX G

29 U.S.C. § 142. Definitions

When used in this chapter –

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in subchapter II of this chapter as amended by this chapter.

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29 U.S.C. § 152. Definitions

When used in this subchapter –

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under Title 11, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but

shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C.A. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

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29 U.S.C. § 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit: enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees

whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena [sic], or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Pa. Stat. Ann. tit. 43 § 260.2a. Definitions

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"**Authorized representative.**" An employe of the Department of Labor and Industry who is empowered to perform duties assigned in conformity with all existing laws, rules and regulations administered by the department.

"**Check.**" A draft drawn on a bank and payable on demand.

"**Department.**" The Department of Labor and Industry.

"**Employer.**" Includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.

"**Fringe benefits or wage supplements.**" Includes all monetary employer payments to provide benefits under any employe benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;[1] as well as separation, vacation, holiday, or guaranteed pay; reimbursement for expenses; union dues withheld from the employes' pay by the employer; and any other amount to be paid pursuant to an agreement to the employe, a third party or fund for the benefit of employes.

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[1] 29 U.S.C.A. § 1002, subsec. (3).

"Secretary." The Secretary of Labor and Industry.

"Wages." Includes all earnings of an employe, regardless of whether determined on time, task, piece, commission or other method of calculation. The term "wages" also includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employes' pay by the employer.

Pa. Stat. Ann. tit. 43 § 260.8. Enforcement

The Secretary of Labor and Industry shall have the duty, but not the exclusive right, to enforce and administer the provisions of this act, to investigate any alleged violations of this act and to institute prosecutions and actions as provided hereunder. Nothing in this act shall authorize the secretary to initiate a civil action for unpaid wages which are subject to disposition under grievance and arbitration procedures of a collective bargaining agreement. The Department of Labor and Industry shall have the power to make rules and regulations for the administration of this act.

Every employer shall keep open to inspection by the secretary or his authorized representative, all payroll records or other records or documents relative to the enforcement of this act. Such inspection may be made by the secretary or his authorized representative at any reasonable time. Every employer shall permit the secretary or any authorized representative to interrogate any employe in the place of employment and during work

hours with respect to such records or documents. Where such records are maintained at a central record keeping office outside of the Commonwealth, such records shall be made available for inspection at the place of employment within seven calendar days following verbal or written notice from the secretary or his authorized representative. Where a microfilm or any other method is authorized for record keeping purposes, the employer shall make available to the secretary or his authorized representative, the equipment which is necessary to facilitate review of the records.

Pa. Stat. Ann. tit. 43 § 260.9a. Civil remedies and penalties

(a) Any employe or group of employes, labor organization or party to whom any type of wages is payable may institute actions provided under this act.

(b) Actions by an employe, labor organization, or party to whom any type of wages is payable to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction, by such labor organization, party to whom any type of wages is payable or any one or more employes for and in behalf of himself or themselves and other employes similarly situated, or such employe or employes may designate an agent or representative to maintain such action or on behalf of all employes similarly situated. Any such employe, labor organization, party, or his representative

shall have the power to settle or adjust his claim for unpaid wages.

(c) The employe or group of employes, labor organization or party to whom any type of wages is payable may, in the alternative, inform the secretary of the wage claim against an employer or former employer, and the secretary shall, unless the claim appears to be frivolous, immediately notify the employer or former employer of such claim by certified mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the secretary of his failure to do so within ten days after receipt of such certified notification, thereafter, the employer or former employer shall be liable for a penalty of ten percent (10%) of that portion of the claim found to be justly due. A good faith dispute or contest as to the amount of wages due or the good faith assertion of a right of set-off or counter-claim shall be deemed a satisfactory explanation for nonpayment of such amount in dispute or claimed as a set-off or counter-claim. The secretary shall have a cause of action against the employer or former employer for recovery of such penalty and the same may be included in any subsequent action by the secretary on said wage claim or may be exercised separately after adjustment of such wage claim without court action.

(d) In any civil action brought under the provisions of this act, the Secretary of Labor and Industry may require the employer to post bond or security to secure payment of the entire claim of the employe with credit in the amount of any good faith assertion of a right of set-off or counter-claim. Such bond or security shall be posted in the court where the civil action is brought. The request

for bond or security shall be signed by the secretary and shall provide that such bond or security in the amount stated shall be posted within 30 days of service thereof on the employer. If such bond or security is not posted within the 30-day period, the employer will be deemed to have admitted his liability and execution may immediately ensue.

(e) If the secretary determines that wages due have not been paid and that such unpaid wages constitute an enforceable claim, the secretary shall, upon the request of the employe, labor organization or party to whom any type of wages is payable, take an assignment in trust, from the requesting party of such claim for wages without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim, subject to the right by the employer to set-off or counter-claim against the assigning party. Upon any such assignment, the secretary shall have the power to settle and adjust any such claim to the same extent as might the assigning party.

(f) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs for reasonable attorneys' fees of any nature to be paid by the defendant.

(g) No administrative proceedings or legal action shall be instituted under the provisions of this act for the collection of unpaid wages or liquidated damages more than three years after the day on which such wages were due and payable as provided in sections 3 and 5.

Pa. Stat. Ann. tit. 43 § 260.10. Liquidated damages

Where wages remain unpaid for thirty days beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is applicable, for sixty days beyond the filing by the employe of a proper claim or for sixty days beyond the date of the agreement, award or other act making wages payable, or where shortages in the wage payments made exceed five percent (5%) of the gross wages payable on any two regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of any wage claim including the good faith assertion of a right of set-off or counter-claim exists accounting for such non-payment, the employe shall be entitled to claim, in addition, as liquidated damages an amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars ($500), whichever is greater.

APPENDIX H

State Wage Payment Statutes that Appear to Provide Remedies for the Breach of Collective Bargaining Agreements Covered by the LMRA

Alaska – Alaska Stat. § 23.10.040 *et seq.* (1990)
Arizona – Ariz. Rev. Stat. Ann. § 23-350 *et seq.* (1983)
Arkansas – Ark. Code Ann. § 11-4-401 *et seq.* (Michie 1987 & Supp. 1993)
California – Cal. Lab. Code § 201 *et seq.* (West 1989)
Colorado – Colo. Rev. Stat. § 8-4-101 *et seq.* (1986 & Supp. 1993)
Connecticut – Conn. Gen. Stat. Ann. § 31-70 *et seq.* (West 1987)
Delaware – Del. Code Ann. tit. 19, § 1101 *et seq.* (1985 & Supp. 1992)
District of Columbia – D.C. Code Ann. § 36-101 *et seq.* (1993)
Georgia – Ga. Code Ann. § 34-7-1 *et seq.* (Michie 1992)
Hawaii – Haw. Rev. Stat. § 388-1 *et seq.* (1994)
Idaho – Idaho Code § 45-601 *et seq.* (1948 & Supp. 1994)
Illinois – Ill. Ann. Stat. ch. 820, para. 115/1 *et seq.* (Smith-Hurd 1993)
Indiana – Ind. Code Ann. § 22-2-9-1 *et seq.* (Burns 1992 & Supp. 1994)
Iowa – Iowa Code Ann. § 91A.1 *et seq.* (West 1984 & Supp. 1994)
Kansas – Kan. Stat. Ann. § 44-312 *et seq.* (1993)
Kentucky – Ky. Rev. Stat. Ann. § 337.010 *et seq.* (Baldwin 1993)

Louisiana – La. Rev. Stat. Ann. § 23:631 *et seq.* (West 1985 & Supp. 1994)

Maine – Me. Rev. Stat. Ann. tit. 26, § 621 *et seq.* (West 1964)

Maryland – Md. Labor & Employment Code Ann. § 3-501 *et seq.* (1991)

Massachusetts – Mass. Ann. Laws ch. 149, § 148 *et seq.* (Law. Co-op. 1989)

Michigan – Mich. Comp. Laws Ann. § 408.471 *et seq.* (West 1985)

Minnesota – Minn. Stat. Ann. § 181.01 *et seq.* (West 1993 & Supp. 1994)

Mississippi – Miss. Code Ann. §§ 71-1-35 to 71-1-45; § 71-1-53 (1972 & Supp. 1993)

Missouri – Mo. Ann. Stat. §§ 290.080 to 290.130 (Vernon 1993)

Montana – Mont. Code Ann. § 39-3-201 *et seq.* (1993)

Nebraska – Neb. Rev. Stat. §§ 48-1228 to 48-1232 (1988)

Nevada – Nev. Rev. Stat. §§ 608.016 to 608.195 (1987)

New Hampshire – N.H. Rev. Stat. Ann. §§ 275:42 to 275:55 (1987 & Supp. 1993)

New Jersey – N.J. Stat. Ann. § 34:11-4 *et seq.* (West 1988)

New Mexico – N.M. Stat. Ann. § 50-4-1 *et seq.* (Michie 1993)

New York – N.Y. Lab. Law § 190 *et seq.* (McKinney 1986 & Supp. 1994)

North Carolina – N.C. Gen. Stat. § 95-25.1 *et seq.* (1993)

North Dakota – N.D. Cent. Code § 34-14-01 *et seq.* (1987 & Supp. 1993)

Ohio – Ohio Rev. Code Ann. §§ 4113.15 and 4113.16 (Baldwin 1990)

Oklahoma – Okla. Stat. Ann. tit. 40, § 165.1 *et seq.* (West 1986 & Supp. 1994)
Oregon – Or. Rev. Stat. §§ 652.110 to 652.250 (1993)
Pennsylvania – Pa. Stat. Ann. tit. 43 §§ 260.1, *et seq.* (1986 & Supp. 1993)
Rhode Island – R.I. Gen. Laws § 28-14-1 *et seq.* (1986 & Supp. 1993)
South Carolina – S.C. Code Ann. § 41-10-10 *et seq.* (Law. Co-op. Supp. 1993)
South Dakota – S.D. Codified Laws Ann. § 60-11-1 *et seq.* (1993 & Supp. 1994)
Tennessee – Tenn. Code Ann. § 50-2-101 *et seq.* (1991 & Supp. 1993)
Texas – Tex. Lab. Code Ann. §§ 61.011 to 61.020 (West Supp. 1994)
Utah – Utah Code Ann. § 34-28-1 *et seq.* (1988 & Supp. 1993)
Vermont – Vt. Stat. Ann. tit. 21, §§ 341 to 347 (1987)
Virginia – Va. Code Ann. § 40.1-29 to 40.1-33 (1990 & Supp. 1993)
Washington – Wash. Rev. Code Ann. §§ 49.48.010 *et seq.*, 49.52.010 *et seq.* (1990 & Supp. 1994)
West Virginia – W. Va. Code § 21-5-1 *et seq.* (1989 & Supp. 1993)
Wisconsin – Wis. Stat. Ann. §§ 109.01 *et seq.*, §§ 111.01(f) (West 1988 & Supp. 1993)
Wyoming – Wyo. Stat. §§ 27-4-101 *et seq.*, §§ 27-4-501 *et seq.* (1991)

APPENDIX I

State Wage Payment Statutes that Appear To Impose Personal Liability on Corporate Officers Absent a Showing Sufficient to Pierce the Corporate Veil

Arkansas – Ark. Code Ann. § 11-4-402(c) (Michie 1987 & Supp. 1993)

California – Cal. Lab. Code § 216 (West 1989)

Colorado – Colo. Rev. Stat. § 8-4-101 (6) (1986 & Supp. 1993)

Connecticut – Conn. Gen. Stat. Ann. § 31-71g (West 1987)

Hawaii – Haw. Rev. Stat. § 388-10 (1994)

Illinois – Ill. Ann. Stat. ch. 820, para. 115/13 (Smith-Hurd 1993)

Indiana – Ind. Code § 22-2-9-1(a) (Burns 1992 & Supp. 1994)

Kansas – Kan. Stat. Ann. § 44-313 (1993)

Kentucky – Ky. Rev. Stat. Ann. § 337.010(d) (Baldwin 1993)

Massachusetts – Mass. Gen. Laws Ann. ch. 149, § 148 *et seq.* (Law Co-op. 1989)

Michigan – Mich. Comp. Laws Ann. § 408.471(d) (West 1985)

Mississippi – Miss. Code Ann. §§ 71-1-53 (1972 & Supp. 1993)

Montana – Mont. Code Ann. § 39-3-201(6) (1993)

Nevada – Nev. Rev. Stat. Ann. §§ 608.011 (1987)

New Hampshire – N.H. Rev. Stat. Ann. §§ 275:42(I) and 275:42(V) (1987 & Supp. 1993)

New Jersey – N.J. Stat. Ann. § 34:11-4.1(a) (West 1988)

New Mexico – N.M. Stat. Ann. § 50-4-1(a) (Michie 1993)
New York – N.Y. Lab. Law § 198-c (McKinney 1986 & Supp. 1994)
North Carolina – N.C. Gen. Stat. § 95-25.2(5) (1993)
North Dakota – N.D. Cent. Code § 34-14-01 (1987 & Supp. 1993)
Pennsylvania – 43 Pa. Stat. Ann. tit. § 260.2a (1992 & Supp. 1994)
Rhode Island – R.I. Gen. Laws § 28-14-1(2) (1986 & Supp. 1993)
South Carolina – S.C. Code Ann. § 41-10-10(1) (Law. Co-op. Supp. 1993)
South Dakota – S.D. Codified Laws Ann. § 60-11-8 (1993 & Supp. 1994)
Texas – Tex. Lab. Code Ann. §§ 61.001 (West Supp. 1994)
Utah – Utah Code Ann. § 34-28-2(1) (1987 & Supp. 1993)
Vermont – Vt. Stat. Ann. tit. 21 § 345 (1987)
Washington – Wash. Rev. Code § 49.52.070 (1990 & Supp. 1994)
West Virginia – W. Va. Code § 21-5-1 (1989 & Supp. 1993)